

CALENDAR ITEM

C54

A 1

06/18/02

W 503.1911

S 2

Rump

Frey

Rusconi

**CONSIDER SETTLEMENT OF
STATE OF CALIFORNIA ET AL. V. MORAIS PROPERTIES ET AL.,
HUMBOLDT COUNTY SUPERIOR COURT NO. DR010914**

This Calendar Item concerns a lawsuit entitled State of California et al. v. Morais Properties et al., Humboldt County Superior Court No. DR010914 and addresses the acceptance of a settlement agreement regarding lands commonly known as the East Levee and the flood plain between the East Levee, the Mad River and the North Fork of the Mad River in Humboldt County. The Mad River and the North Fork of the Mad River are considered navigable waterways protected by the public trust for commerce, navigation and fisheries.

Early in 2001 the Commission was approached by the Mad River Levee Access Group to join in attempts to secure the establishment of public access rights over the East Levee and surrounding lands. The levee was constructed in the early 1950's by the Corps of Engineers to protect the surrounding land from high water from the Mad River. Since construction of the levee, the public has used the top of the levee to access the Mad River for a variety of water and land related recreational uses such as walking, swimming, fishing, wading and horseback riding. Commencing in June 1998, the defendants, the owners of the underlying properties, erected barricades and posted "No Trespassing" signs along the levee. Thus denying the public access to the levee and the floodplain.

Initial negotiations with the defendants were inconclusive and the Mad River Levee Access Group requested the County of Humboldt and the Commission to intervene as co-plaintiffs. Litigation was filed in December 18, 2001. Plaintiffs alleged that the People of the State of California have a prescriptive right to the levee for pedestrian access to the Mad River and sought a judgment that the public is the owner of a non-exclusive easement for public access and right of way for recreational purposes on and over the top and the riverward slope of the East Levee and the flood plain located between the East Levee and the Mad River and the North Fork of the Mad River traversing the subservient tenements of the defendants. Defendants denied the plaintiffs' allegations and cross complained seeking damages for destruction of property and an injunction preventing the free roaming of dogs that attacked defendants' cattle.

In settlement negotiations, an agreement has been reached that will preserve the public's right of access on the East Levee. Defendants Morias Properties and the

CALENDAR ITEM NO. **C54** (CONT'D)

Nielsen Family will grant to the People of the State of California an easement for pedestrian access to the flood control levee. The public's use of the easement will be limited to one hour before dawn to one hour after dusk. Morias Properties will be entitled to close, with 24 hours notice, the easement twice a year to move its cattle from one pasture to another via the levee. It was also agreed that Morias Properties would improve the fence on the north side of the levee so that dogs and other animals cannot access Morais' pasture used by his dairy cattle. Morais Properties has indicated it would install the fencing if the Commission would bear the cost of materials, a total of about \$7,000.

Staff concludes that the settlement agreement is in the best interests of the State because of the access benefits.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code, Division 6, Parts 1 and 2; Division 13.
- B. California Administrative Code, Title 2, Division 3; Title 14, Division 6.

AB 884: N/A

OTHER PERTINENT INFORMATION:

- 1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems and leases in connection with those settlements.

EXHIBIT: East Levee along the Mad River

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

- 1. APPROVE THE SETTLEMENT OF LITIGATION IN THE CASE OF STATE OF CALIFORNIA ET AL. V. MORAIS PROPERTIES ET AL., CASE NO. DR010914 BY ACCEPTING A GRANT OF AN ACCESS EASEMENT ON AND ACROSS THE EAST LEVEE ALONG THE MAD RIVER FROM MORAIS PROPERTIES AND THE NIELSEN FAMILY AND APPROVING THE EXPENDITURE OF \$7,000 FOR FENCING AND OTHER PUBLIC ACCESS IMPROVEMENTS ON TERMS ENTERED INTO AS A PART OF THE FINAL JUDGMENT.

CALENDAR ITEM NO. **C54** (CONT'D)

2. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO IMPLEMENT THE SETTLEMENT OF STATE OF CALIFORNIA ET AL. V. MORAIS PROPERTIES ET AL., CASE NO. DR010914.